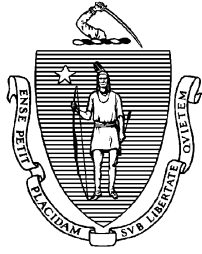


## Representative Sullivan of Fall River



# The Commonwealth of Massachusetts

IN THE YEAR TWO THOUSAND FIVE

## **AN ACT** TO PROMOTE ENVIRONMENTAL JUSTICE IN THE COMMONWEALTH.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

The general court finds that:

(1) certain communities in the commonwealth are disproportionately burdened by environmental hazards such as excessive air pollution, water pollution, hazardous waste and noise;

(2) the health, safety and quality of life of residents and workers in such communities, especially children, the elderly and those with already-compromised health are negatively affected by these hazards;

(3) concentrations of pollution sources pose a significant barrier to economic development in low-income neighborhoods and communities of color, in particular;

(4) many of these impacted communities desire cleaner and safer development to ensure economic security; and

(5) the commonwealth seeks to ensure equal protection of all residents, affirm human rights and promote public health and environmental quality in all communities.

SECTION 2. Section 2 of chapter 21A of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by inserting after clause (7) the following clause:—

(7A) develop statewide policies to promote environmental justice in the commonwealth and protect and regulate the use of areas of critical environmental justice concern in the commonwealth.

SECTION 3. Said chapter 21A of the General Laws, as so appearing, is hereby amended by adding the following 2 sections:—

Section 21. As used in this section and in section 22, the following words shall have the following meanings unless the context clearly requires otherwise:—

“Cleaner production”, a manufacturing process or approach to manufacturing production that is based on toxics use reduction and pollution prevention and that strives to incorporate the following components: waste reduction, non-polluting production, energy efficiency, safe and healthy work environments and environmentally sound products and packaging.

“Disproportionate burden,” an unfair share of environmental pollution from industrial, commercial, state and municipal operations or an inadequate access to natural resources, including open space and water resources, borne by a group of people.

"Equal protection," no group of people, based on race, ethnicity, class, gender or handicap bears an unfair share of environmental pollution from industrial, commercial, state or municipal operations or from inadequate access to natural resources, including open space and water resources.

"Environmental benefits", access to funding, open space, enforcement, technical assistance, training or other beneficial resources disbursed by the secretary of environmental affairs, its agencies, and its offices.

"Environmental justice", equal protection and meaningful involvement of all people with respect to the development, implementation and enforcement of environmental laws, regulations and policies and the equitable distribution of environmental benefits.

"Environmental justice population", a neighborhood in which the annual median household income is equal to or less than 65 per cent of the statewide median or whose population is made up 25 per cent minority, foreign born or lacking English language proficiency or a community that the secretary has determined has received a disproportionate burden or otherwise not received equal protection.

"Foreign born", individuals who identify themselves on federal census forms as not United States citizens at birth.

"Lacking English language proficiency", households that, according to federal census forms, do not have an adult proficient in English residing therein.

"Low income", median annual household income at or below 65 per cent of the statewide median income for Massachusetts, according to federal census data.

"Meaningful involvement", that all neighborhoods have the right to participate in partnership with government in environmental decision-making including needs assessment, planning, implementation, enforcement, and evaluation, and that all neighborhoods are enabled

and administratively assisted to participate fully through education and training means, and encouraged to develop environmental stewardship.

"Minority", individuals who identify themselves on federal census forms as non-white or Hispanic.

"Neighborhood", a census block group as defined by the U.S. Census Bureau but not including people who live in college dormitories or people under formally authorized, supervised care or custody.

"Supplemental environmental project", the performance of environmentally beneficial projects in the settlement of environmental enforcement cases.

Section 22. (1) The secretary of environmental affairs shall establish an environmental justice program consisting of, but not limited to, the following components:

(a) a policy position entitled the director of environmental justice and brownfields redevelopment within the office of the secretary. The director shall act as the initial point of contact on all environmental justice matters and shall coordinate the implementation of this policy, track progress and prepare annual reports for public distribution. The director shall develop a work plan for the implementation of the environmental justice program within the office of the secretary.

(b) identification of environmental justice populations to be serviced by this section via geographic information systems mapping or other suitable tools, and update of this map as new United States census data becomes available.

(c) establishment of a procedure under which additional communities that do not fall under the strict demographic definition of an environmental justice population, and do not make up an entire census block, may petition for such status. The petition shall be submitted by 10 citizens, demonstrate that the definition of an environmental justice population is met, and delineate proposed geographic boundaries of the environmental justice population. The secretary shall make a finding whether the petitioner has borne a disproportionate burden or otherwise has not received equal protection.

(d) establishment of an environmental justice advisory committee to the secretary, consisting of 2 representatives from the business community, 2 representatives from environmental justice populations, 2 representatives of regional environmental justice advocacy organizations, 1 representative of a public health/environmental health advocacy organization, 1 representative of a state-wide environmental organization, and 1 representative of a state-wide community development organization. The advisory committee shall meet at least quarterly to review programs established under this section and provide input as to its effective implementation.

(e) establishment of regional agency outreach teams of liaisons from each agency and region. The team shall consist of a coordinator and existing agency staff. The teams shall, without limitation: (1) open lines of communication with local neighborhood groups through routine meetings; (2) establish specific task forces; (3) further identify languages issues; (4) identify enforcement priorities on a local basis; (5) identify a list of community improvement projects; (6) allow issues with existing facilities to be raised and addressed; (7) assist the department of environmental protection and other agencies with targeting enforcement; (8) assist

the office of technical assistance and other agencies with targeting assistance; and (9) identify potential economic development opportunities that promote cleaner production and sustainable business practices.

(f) establishment and coordination of the efforts of a working group made up of senior-level managers from each agency within the executive office of environmental affairs, the department of economic development, the department of housing and community development and the department of public health, as well as representatives from at least 2 environmental justice populations. The working group shall maximize state resources, research and technical assistance to further the goals of this section to ensure environmental justice concerns are evaluated and addressed in each of the agencies' jurisdiction and programs.

(g) direction of agencies under the secretary to designate senior-level managers to participate in and actively support the working group and the regional agency environmental justice outreach teams.

(h) direction of agencies under the secretary to identify and promote agency-sponsored projects, funding decisions, rulemakings or other actions intended to further environmental justice in the commonwealth.

(i) identification of resources to create, restore, and maintain open spaces located in neighborhoods where environmental justice populations reside. At a minimum, the interagency land committee which includes the department of conservation and recreation and the division of fish and wildlife, together with the office of environmental law enforcement in the office of the

secretary, shall make the promotion of preserving and restoring open spaces in neighborhoods in which environmental justice populations reside a priority.

(j) providing an introductory environmental justice training program for employees in the executive office of environmental affairs, watershed teams and municipalities applying for grant programs or for any other resources prioritized or focused on neighborhoods in which environmental justice populations reside. Staff serving on regional agency environmental justice outreach teams, employees or organizations disbursing state funds to municipalities, individuals and organizations for the provision of open space, river maintenance or restoration, education, and technical assistance; environmental policy staff, and the environmental justice working group shall receive such training.

(k) development of fact sheets describing programs directly relevant to obtaining funding or additional resources for environmental justice populations including, but not limited to, the urban self help program, Massachusetts Environmental Trust and the Massachusetts environmental policy act. The fact sheets shall be made available in languages other than English.

(l) development of a distribution list of interested members of environmental justice populations, non-profit organizations and others to be incorporated into mailing lists for newsletters and other general outreach information.

(m) development and maintenance of a list of alternative information outlets that service environmental justice populations including, but not limited to, media in languages other than English, for the purpose of seeking public comments or publishing public notices.



(n) establishment of multiple information repositories in neighborhoods in which environmental justice populations reside.

(o) direction of agencies to develop a Public Participation Strategy that focuses agency resources on outreach activities to enhance public participation opportunities for agency activities that potentially affect environmental justice populations including, but not limited to: (1) scheduling public meetings or hearings at locations and times convenient for neighborhood stakeholders; (2) translating public notices into other languages; (3) offering interpreters and translated documents at public meetings; (4) providing notices as early as possible to all neighborhoods potentially impacted by a decision; and (5) assisting environmental justice populations with grant applications and questions about environmental regulations to assist them with compliance and sustainability.

(p) cooperation with other agencies as necessary to maximize site remediation and redevelopment programs under chapter 206 of the acts of 1998 and the promotion of nonpolluting development in neighborhoods where environmental justice populations reside.

(q) direction of the environmental justice regional agency outreach teams to identify and address environmental justice issues and to identify and reclaim brownfields sites identified under chapter 206 of the acts of 1998 within each region.

(r) direction of the Massachusetts environmental policy act office to:

(1) develop enhanced public participation for any project that exceeds an Environmental Notification Form threshold for air, solid and hazardous waste, other than remediation projects, or wastewater and sewage sludge treatment and disposal, if the project site is located within 1

mile of an environmental justice population, or in the case of projects exceeding said threshold for air, within 5 miles of an environmental justice population; and require enhanced analysis of impacts and mitigation for an Environmental Impact Report scope if the project exceeds a mandatory Environmental Impact Report threshold for air, solid and hazardous waste, other than remediation projects, or wastewater and sewage sludge treatment and disposal, and the project site is located within 1 mile of an environmental justice population, or in the case of projects exceeding a mandatory threshold for air, within 5 miles of an environmental justice population. Thresholds for the forms and reports identified in this clause are codified at 310 CMR 11.00 et seq.

(2) exempt site assessment grants and loans granted under the Brownfields Redevelopment Fund, as well as investment tax credits for equipment, tenant fit-ups, and other post-development activities administered under chapter 206 of the acts of 1998 from the category of state financial assistance for the purposes of triggering Massachusetts environmental policy act review. Projects undertaken under chapter 206 of the acts of 1998 that otherwise trigger Massachusetts environmental policy act review may be considered environmental restoration projects and subject to expedited review. In making a decision, the secretary will consider the extent to which the new proposal would prevent pollution and eliminate or minimize risks to public health and the environment.

(s) direction of the department of environmental protection to: (1) prioritize neighborhoods in which environmental justice populations reside when selecting sectors and facilities for inspection and monitoring, prosecuting non-compliance, providing compliance assistance and allocating resources; (2) prioritize municipal outreach for sites identified under

chapter 21E to neighborhoods with environmental justice populations; (3) incorporate environmental justice as a criterion for awarding technical assistance grants to non-profit organizations; (4) prioritize technical assistance to environmental justice populations in neighborhoods with hazardous waste sites identified under chapter 21E; (5) communicate with the list of community-based organizations in neighborhoods where environmental justice populations reside in addressing compliance matters; (6) consider environmental justice as a factor in establishing priorities for activity use limitation audits under chapter 21E; (7) incorporate environmental justice as a criterion in prioritizing the investigation of sites, negotiating cost recovery under chapter 21E; (8) provide for commensurate cost recovery to municipalities for “back taxes”, exclusive of interest and penalties, on sites identified under said chapter 21E and located in neighborhoods in which environmental justice populations reside; (9) conduct a study on the number of hazardous waste sites, nuclear or fossil fuel power plants, or solid waste facilities located within 2 miles from any environmental justice community, water quality of nearby water bodies and groundwater, air pollution emissions including both stationary and mobile sources. The study shall be completed on or before December 31, 2007, shall be posted on the department’s website and shall be updated every 5 years; (10) database cumulative thresholds all types of facilities or pollution sources studied that any community can safely house and prohibit the permitting of new sites or facility expansions or updates that exceed the cumulative threshold for a community; (11) create and require a new permit that requires pollution and emissions information on all pollutants tracked in the cumulative impact study and any prior violations of a facility for the purpose of updating the cumulative impact study and publishing publicly on the department website and in an annual report of all new industries permitted in environmental justice communities; and (12) meet regularly with the

executive office of environmental affairs and the department of public health to coordinate on environmental issues potentially affecting public health, including matters related to exposures from multiple sources of pollution.

(t) require that anyone proposing to develop or expand a facility or pollution source studied, as provided in clause (9) of paragraph (s), shall complete a notice of intent to obtain a permit in all environmental justice communities prior to submitting an application for a permit. The applicant shall publish a notice of intent to obtain a permit at least once in the newspaper of largest circulation in the community in which the facility is located or proposed to be located, and deliver a copy of the notice to the department 3 days prior to its publication. The applicant shall also publish notice of intent to obtain a permit in local ethnic newspapers if they exist, and alternative outlets, as described in paragraph (m), in the city in which the facility located or proposed to be located. Notices in local ethnic newspapers shall be published in the language of the newspapers. The department shall mail the notice of intent to obtain a permit to: (1) the chief executive and board of health of the municipality in which the facility is located or proposed to be located; (2) the environmental justice advisory committee; and (3) all residents and property owners within 500 feet of the proposed facility or action. The department shall establish the form and content of the notice to include: (1) the location and nature of the proposed activity; (2) the location at which a copy of the application is available for review and copying; (3) a description, including a telephone number and address, of the manner in which a person may contact the department for further information; (4) a description, including a telephone number and address, of the manner in which a person may contact the applicant for further information; (5) a description of the manner in which a person may provide comments to the applicant, including contact information and/or time and location of any public meeting to be held; (6) deadlines,

printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice; (7) description of the procedure by which a person may be placed on a mailing list in order to receive additional information about the application; (8) description of any other legally required public comment period, including duration, contact information, and the time and location of any public meeting to be held; and (9) a compliance history of the plant or company representative of the applicant's interests. The applicant shall make all descriptions available in non-technical, jargon-free, and easily understood English, as well as, upon request, in non-English languages spoken by 20 percent or more of the residents of the environmental justice community. The applicant shall make all copies and versions of the application available for review and copying at a public place in the city or town in which the facility is located or proposed to be located, and in any bordering cities or towns within 1 mile of the proposed location;

SECTION 4. The executive office of environmental affairs shall adopt the initial regulations required by clause (7A) of section 2 of chapter 21A within 90 days after the effective date of this act.